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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – WEST JUDICIAL DISTRICT**

HERRICK PRODUCTIONS, LLC, a
Delaware limited liability company,

Plaintiff,

vs.

MATTEL, INC., a Delaware corporation,
and DOES 1 through 10,

Defendants.

Case No.:

Unlimited Civil Case
Demand over \$25,000

COMPLAINT FOR:

- 1. BREACH OF IMPLIED CONTRACT;**
- 2. BREACH OF CONFIDENCE;**
- 3. FRAUD; AND**
- 4. TRADE SECRET MISAPPROPRIATION**

1 Plaintiff Herrick Productions, LLC (“HP”), alleges the following causes of action
2 against defendant Mattel, Inc. (“Mattel”), and Does 1 through 10, inclusive (collectively,
3 “Defendants”):

4 INTRODUCTION

5 1. This matter involves Mattel’s idea theft and breach of an implied contract with
6 HP to participate in production of the show *Playmakers* with HP, and Mattel’s fraud designed
7 to keep HP sitting on the sidelines while Mattel rushed to market. *Playmakers* is an unscripted
8 television show where inventors pitch their toys to child judges for evaluation with the goal of
9 reaching the finale. The winner of the finale receives prize money and a contract for
10 production of the toy. Mattel was to be featured prominently as the exclusive toy sponsor of
11 the series, was to be totally integrated into the show and would manufacture the winner’s toy as
12 the grand prize for the winning toy inventor. Instead, Mattel produced the show as *The Toy*
13 *Box* without HP in breach of its contract. Mattel took HP’s ideas, breached its obligations to
14 include HP, and produced the show under another title as *The Toy Box* causing financial
15 damages to HP. To prevent HP from beating Mattel to market, Mattel strung HP along by
16 lying about its continued interest in working with HP.

17 COMMON ALLEGATIONS

18 2. Herrick Productions, LLC, is, and at all times relevant herein was, a Delaware
19 limited liability company with its principal place of business in Boca Raton, Florida. Herrick
20 Productions, LLC, and any predecessor in interest are referred to as “HP.”

21 3. Mattel is, and at all times relevant herein was, a Delaware corporation with its
22 principal place of business in the County of Los Angeles, State of California.

23 4. The wrongful acts by the Defendants, and each of them, alleged herein occurred
24 in the County of Los Angeles, State of California where the agreement was entered into, and
25 the *Playmakers* ideas were presented and taken in breach of the agreement.

26 5. HP is informed and believes that all Defendants were acting at all relevant times
27 as the partner and/or authorized agents and/or employees and/or joint venturers and/or co-
28 conspirators of all other Defendants, with the full knowledge of each Defendant’s acts and

1 omissions, as alleged herein, and that each Defendant ratified each and every act and/or
2 omission of each and every other Defendant, as alleged herein.

3 6. HP is currently unaware of additional persons or entities that might be legally
4 responsible in some manner for the acts and/or omissions and the damages alleged or other
5 relief sought herein. Should HP later discover information that suggests others are responsible
6 in some manner for the acts and omissions described herein, and/or the damages or other relief
7 sought herein, HP will amend this Complaint to add any and all such Defendants, who are
8 designated at this time only as Does 1 through 10, inclusive.

9 7. Upon information and belief, HP alleges that the Defendants at all times relative
10 to this action were the alter egos of one another, and there exists, and at all times herein
11 mentioned has existed, a unity of interest and ownership between and among the Defendants
12 such that any separateness has ceased to exist.

13 8. Venue in this Court is proper pursuant to California Code of Civil Procedure
14 Section 395 in that, among other things, the wrongful acts alleged herein occurred in Los
15 Angeles County, California.

16 9. Herrick Productions, LLC, is the owner of all rights concerning a reality
17 entertainment format known as *Playmakers*.

18 10. *Playmakers* is an unscripted television show where inventors pitch their toys to
19 child judges for evaluation with the goal of reaching the finale. The winner receives prize
20 money and a contract for production of the toy.

21 11. HP invested substantial time and money in obtaining these rights, in further
22 developing and protecting the concept, and in preparation of pitching *Playmakers* to U.S.
23 networks, potential partners, and buyers to obtain a production order. HP also had a
24 development agreement with The CW and a production services agreement with R83
25 Productions, Inc.

26 12. HP was looking to partner with a toy company in producing *Playmakers* and as
27 the exclusive toy sponsor and/or the manufacturer of the toys.
28

1 13. The individuals affiliated with HP who interacted with Mattel included Norton
2 Herrick (“Herrick”) (who was and is HP’s managing member), Phil Gurin (“Gurin”), and Pilar
3 de Posadas (“de Posadas”).

4 14. HP contacted Mattel and reached an agreement whereby HP agreed to
5 confidentially share information and all their ideas as to how to produce *Playmakers* with
6 Mattel and in exchange Mattel would keep the ideas confidential and participate in the show
7 only with HP.

8 15. Mattel breached its contract with HP to keep the ideas confidential and did not
9 produce *Playmakers* with HP. Instead, Mattel used HP’s ideas, given as conditional
10 consideration to Mattel in exchange for Mattel’s agreement to produce the show only with HP,
11 and produced the show under the title *The Toy Box* with another entity.

12 16. *The Toy Box* is an ABC unscripted television series that premiered on or about
13 April 7, 2017, thereby first providing notice to HP of Mattel’s breach and other misconduct.
14 The show depicts toy inventors as they present toys to child judges for evaluation and
15 advancement to the finale. The season's winning toy is then produced and distributed by
16 Mattel.

17 17. On or about June 16, 2017, ABC renewed the series for a second season.

18 18. In or around April or May 2014, a meeting was arranged for HP and Mattel to
19 discuss *Playmakers*.

20 19. Through Gurin, HP discussed the face-to-face meeting with Mattel’s Vice-
21 President Communications, Julia Pistor, and discussed disclosures in advance of the meeting.

22 20. Mattel was provided a written Confidential Notice by HP prior to or at the
23 inception of the first in-person meeting. The notice preceded the opening of a packet of
24 confidential documents regarding *Playmakers* making clear that disclosure of *Playmakers* was
25 conditioned on Mattel’s confidentiality. Since Mattel was required to keep the disclosure
26 confidential, it could not use the information disclosed to produce the show with anyone else.

27 The Confidential Notice stated:

28 Confidential Notice

1 “Property”

2 THIS IS A CONFIDENTIAL MEMORANDUM (the “Memorandum”)
3 intended solely for your own limited use to determine whether you wish to
4 express any further interest in the “Property”.

5 This Memorandum contains brief, selected information pertaining to the
6 business and affairs of the Property. This Memorandum does not propose
7 to be all-inclusive nor does it contain all the information, which a
8 prospective investor may desire. We do not make any representations or
9 warranty, expressed or implied, as to the accuracy or completeness of this
10 Memorandum or any of its contents, and no legal liability is assumed or is
11 to be implied by any of the aforementioned with respect thereto.

12 By your receipt of the Memorandum, you agree that this Memorandum and
13 the information contained herein is of a strict confidential nature and you
14 will not disclose this Memorandum or any part of the contents to any other
15 person, firm or entity without our prior written authorization.

16 **If you do not wish to pursue this matter or if we advise you for any**
17 **reason whatsoever to return this Memorandum, you agree that you will**
18 **promptly return this memorandum to us. Photocopying or other**
19 **duplication is not authorized.**

20 This Memorandum shall not be deemed an indication of the state of affairs
21 of the Property, nor shall it constitute an indication that there has been no
22 change in the business or affairs of the Property since the date of preparation
23 of this Memorandum.

24 Our dissemination of this Memorandum to you does not nor is it intended
25 to create any rights in your favor in connection with the Property, including
26 without limitation, the acquisition of the Property. Any such rights and
27 obligations will only be created by a written document executed by the party
28 to be bound thereunder.

29 21. Through Julia Pistor, Mattel accepted the meeting on the terms set forth in the
30 written Confidential Notice.

31 22. In May 2014, also prior to the first meeting, through Julia Pistor, Mattel
32 requested and HP rejected an onerous Non-Disclosure Agreement (“NDA”) which may have
33 given Mattel control of HP’s submissions and ideas exchanged in the meeting. The proposed
34 NDA that HP rejected specifically states:

35 4. SIMILAR SUBMITTED IDEAS. Vendor recognizes that: (a) Mattel has
36 a number of products sold under a variety of brands (collectively, “Mattel
37 Products”), and (b) Mattel has developed, and Mattel has suggested to it by
38 third parties, many ideas, materials, products, concepts, and techniques
39 relating to Mattel Products. Accordingly, Vendor recognizes that any ideas,
40 materials, products, concepts, and techniques that Vendor might disclose to
41 Mattel, whenever and however disclosed, including without limitation,

1 pitch materials, so-called “leave behind materials”, scripts, stories,
2 storyboards, flowcharts, catch words, messages, tag lines, literary material,
3 characters, personalities, dialogue, text, themes, plots, titles, compositions,
4 music, sounds, storylines, inventions, designs, sketches, artwork, models,
5 and written or oral suggestions (such similar and identical ideas, materials,
6 concepts, and techniques collectively, “Similar Submitted Materials”), are
7 likely to be similar or identical to, in whole or in part, and may compete
8 with some such developed and suggested ideas, materials, products,
9 concepts, and techniques. Vendor therefore agrees that: (i) no submission
10 by it to Mattel of Similar Submitted Materials (in any form and however
11 identified or marked by Vendor, regardless of whether Mattel objects to any
12 such identification or marking) is made in confidence or constitutes
13 Vendor’s confidential information, and (ii) no express or implied obligation
14 of any kind, including any payment obligations for the use of such Similar
15 Submitted Materials, is assumed by Mattel with respect thereto unless and
16 until a subsequent written agreement is executed and delivered (if at all) by
17 Mattel and Vendor, and then the obligations of Mattel will be only those set
18 forth in the written agreement. Vendor further agrees that: (A) Mattel has
19 no obligation to disclose to it the existence of any similar or identical ideas,
20 concepts, or materials that are developed or received by Mattel, and (B)
21 Mattel does not assume any obligation, express or implied, in connection
22 with Mattel’s non-disclosure of the existence of them. Vendor hereby
23 renounces, and agrees to renounce, any claim that Mattel misappropriated
24 any non-copyrightable and/or non-patentable ideas or concepts, and Vendor
25 agrees that any claim that Mattel has used Vendor’s Similar Submitted
26 Materials, or any element thereof, must be brought exclusively under the
27 Patent and Copyright Laws of the United States.

28 23. In May 2014, HP, through Gurin, rejected this proposed NDA prior to the
meeting because for HP confidentiality was a requirement of the meeting. Through HP’s
rejection of this NDA Mattel was notified that HP’s ideas were its own and must be kept
confidential or no meeting would take place. Mattel, through Pistor, agreed to the meeting
without the NDA and understood that HP’s ideas must remain confidential and could not be
used without HP’s participation.

24. While Mattel was free to reject the concept proposed by HP and not participate,
Mattel was not free to undertake the idea without HP. Mattel agreed that HP would divulge the
details of the format and all ideas for *Playmakers* and that Mattel would keep the concept
confidential even if Mattel chose not to participate in *Playmakers* and agreed to attend the
meetings with HP with these conditions in place.

25. Before the meeting took place, Mattel understood and agreed to meet with HP
with the understanding that HP had the exclusive format rights to *Playmakers* and Mattel was
to keep the idea confidential and could not use the idea of *Playmakers* without HP. However,

1 Mattel did not keep these promises.

2 26. Mattel wanted its entire team present at a face to face meeting on June 30, 2014,
3 with HP regarding *Playmakers*. The meeting was attended by the following six Mattel
4 executives and officers who accepted the terms set forth by HP.

5 Tim Kilpin — EVP, Boys and Girls Brands Global Marketing

6 Dave Voss — SVP, Playground Productions

7 Julia Pistor — Executive Producer, Playground Productions

8 P.J. Lewis — Senior Director Global Games Brand Marketing

9 Holly Stein — VP, Licensing Acquisition

10 Lisa Strom — VP, Girls Creative Design

11 27. Herrick, Gurin, and de Posadas participated in the June 30, 2014, meeting for
12 HP. HP made clear from its emails, written notice, actions, and statements that the information
13 being relayed was “confidential” that disclosure of the details respecting *Playmakers* was
14 conditioned on Mattel’s confidentiality and potential participation with HP in the project.
15 Mattel knew or should have known of that condition and, in turn, Mattel’s six executives listed
16 above voluntarily accepted HP’s *Playmakers* information with knowledge of the required
17 confidentiality and potential partnership by participation in the meeting.

18 28. Only after Mattel accepted the condition that to use the details respecting
19 *Playmakers* it must participate with HP, did Herrick disclose the details of the *Playmakers*
20 format and explain HP’s ideas respecting the potential television series based thereon to
21 Mattel.

22 29. Prior to and at the time of disclosure, it was well understood by the parties that
23 should Mattel participate, HP would receive compensation for its ideas. HP would produce
24 and fund the show and integrate Mattel into the show. Mattel would receive an increase in toy
25 sales and exposure to help push Mattel once again to be the #1 toy manufacturer/distributor in
26 the world.

27 30. The parties also had a mutual understanding that the disclosure was conditioned
28 on Mattel’s confidentiality and HP’s participation in the project.

1 31. At the meeting, with a bilateral understanding regarding disclosure agreed upon,
2 HP provided Mattel with a demo reel and documents regarding *Playmakers* including
3 providing the written Confidential Notice as a cover sheet to the written materials.

4 32. After the first meeting, HP was informed by Mattel's Director, Licensing
5 Acquisitions, Hollie Holmes, that *Playmakers* was at the "very top" of the Mattel organization
6 being discussed with chief executives and that Mattel wanted to move forward.

7 33. Shortly after that call, Mattel's VP Communications, Julia Pistor, also set a
8 follow-up call and later requested a further meeting regarding *Playmakers*. She informed HP
9 that she was involving Mattel's then Chief Brand Officer, Richard Dickson (now Mattel
10 President and Chief Operating Officer), so HP could return and discuss the project "with key
11 decision-makers." Mattel requested specific changes in the PDF presentation made to it,
12 showing that Mattel had carefully studied and analyzed the ideas regarding the whole show and
13 its acts.

14 34. On September 5, 2014, HP met again with several key persons at Mattel in El
15 Segundo, California to discuss *Playmakers*. That meeting was attended by eleven Mattel officers
16 and/or executives, including:

17 Richard Dickson — then Chief Brands Officer

18 Erin Chan —SVP, Finance and Strategic Planning

19 Hollie Holmes — Director, Licensing Acquisitions

20 Jeff Korchek — VP, AGC Business and Legal Affairs

21 Evelyn Mazzocco — SVP, Global Brands Creative

22 Julia Jensen — VP, Communications

23 Julia Pistor — VP, Playground Productions

24 Gary Swisher — SVP, Global Brands Creative

25 Doug Wadleigh — SVP, Boys Global Marketing

26 LeeAnn Wong — VP, Inventor Relations

27 Michael Shore — VP, Global Consumer Insights

28 ///

1 35. At no time did Mattel disclose that it was involved in a similar project presented by
2 others. To the contrary, Mattel communicated that it loved the new idea and format and was
3 excited about the new idea and also wanted to discuss partnering with HP to produce movies
4 that featured Mattel's toys.

5 36. On or about September 6, 2014, Mattel's Holmes thanked Herrick for the meeting and
6 advised that HP's business affairs attorney should start discussing the project with Mattel's Jeff
7 Korchek. They discussed the project and Korchek stated that he was going to discuss the project
8 with Dickson.

9 37. Discussions went on between HP and Mattel about the project and included specifics
10 about HP having distribution rights, receiving sponsorship, integration, and product-placement
11 monies, as well as a percentage of sales from the manufactured toys related to the series.

12 38. HP discussed with Mattel that HP's compensation would include a percentage of all sales
13 associated with the winning toy from every season and other Mattel toys featured on the show; a
14 percentage of ownership of the business of each inventor presenting on the show going forward;
15 the value of production of the show and tape/format sales of the show; value of product and
16 sponsor integration; its profits from distribution; a percentage of any other items manufactured
17 and/or sold by Mattel; revenue from spinoffs and sequels; and HP's ultimate sale of its TV series
18 and website at eight times cash flow from the TV series and ten times cash flow for the sale of its
19 website company including its app. The website company would have on its website the airing
20 of all episodes after airing on the networks, tutorials of the toys and inventors building the toys,
21 and all the toys presented on the show. It also would have sales and co-branding with other
22 companies.

23 39. HP prepared the presentation for the meeting with Mattel, disclosed the work to Mattel
24 for a business transaction only after Mattel voluntarily accepted the disclosure of HP's ideas by
25 agreeing to the meeting knowing the conditions on which the ideas were tendered and the
26 reasonable value expected for use of the ideas.

27 40. HP was later informed by Mattel that it was not going to move forward with the project
28 at that time because Mattel had a poor financial period, but would let HP know when things

1 changed.

2 41. Despite the agreement, Mattel promptly moved forward with the project without
3 notifying HP and in breach of the agreement without compensating HP.

4 42. HP has been damaged because Mattel has not gone forward with HP, as promised,
5 although it proceeded with *Playmakers* and took HP's ideas in breach of the agreement. HP is
6 entitled to the compensation that Mattel agreed HP would receive if the project moved forward,
7 including without limitation a percentage of the show's profits, sponsorship revenue, integration
8 fees, rebate revenue, international sales of formats and tapes, a percentage of all sales associated
9 with the winning toy from every season and other toys featured on the show, a percentage of
10 ownership of the business of each inventor presenting on the show going forward, revenue from
11 spinoffs, a percentage of website/app revenue and the value of HP's ultimate sale of its TV series
12 and any affiliated website and/or app.
13

14 **FIRST CAUSE OF ACTION**

15 **(For Breach of Implied Contract Against Mattel, and Does 1 through 10)**

16 43. HP re-alleges herein by this reference each and every allegation contained in
17 paragraphs 1 through 42, inclusive, of this Complaint as if fully set forth herein.

18 44. HP and Mattel entered into an agreement whereby HP confidentially disclosed the
19 *Playmakers* concept to Mattel in exchange for Mattel's promise that it would participate
20 exclusively with HP if Mattel decided to move forward with the *Playmakers* concept or any
21 other similar concept.

22 45. Mattel voluntarily accepted the disclosure knowing the condition on which it was
23 tendered.

24 46. HP also disclosed the work to Mattel under the condition of confidentiality and
25 receiving certain compensation, as set forth above, for participation on the project only with HP.
26 The reasonable value of HP's compensation was discussed in detail.

27 47. After reaching the agreement regarding disclosure, HP presented the *Playmakers*
28 concept to Mattel.

1 48. Mattel knows the reasonable value of the work presented by HP.

2 49. Mattel breached the agreement and failed to perform its obligations under the
3 agreement, specifically using HP's *Playmakers* and undertaking the *Playmakers* project with
4 another as *The Toy Box*.

5 50. The breaches by Mattel caused HP damages in an amount in excess of the Court's
6 general jurisdiction, to be proven at the time of trial. Such damages include without limitation a
7 percentage of the show's profits, sponsorship revenue, integration fees, rebate revenue,
8 international sales of formats and tapes, a percentage of all sales associated with the winning toy
9 from every season and other toys featured on the show, a percentage of ownership of the
10 business of each inventor presenting on the show going forward, revenue from spinoffs, a
11 percentage of website/app revenue, and the value of HP's ultimate sale of its TV series and any
12 affiliated website and/or app. Such damages are in an amount estimated to be hundreds of
13 millions of dollars and in excess of the jurisdictional minimum of this court to be determined at
14 trial.

15 **SECOND CAUSE OF ACTION**

16 **(For Breach of Confidence Against Mattel and Does 1 through 10)**

17 51. HP re-alleges herein by this reference each and every allegation contained in
18 paragraphs 1 through 50, inclusive, of this Complaint as if fully set forth herein.

19 52. After reaching the agreement regarding disclosure, HP conveyed confidential and
20 novel information to Mattel regarding the *Playmakers* show format.

21 53. Mattel knew that the information about *Playmakers* was being disclosed in
22 confidence and only in exchange for Mattel's participating in *Playmakers* and that Mattel could
23 not use *Playmakers* without HP.

24 54. There was an agreement between HP and Mattel that the confidence be
25 maintained even if Mattel chose not to participate in *Playmakers*.

26 55. Mattel's disclosure to others and use of the *Playmakers* format and HP's ideas
27 without HP is a violation of the agreement with HP.

28 56. The breaches by Mattel caused HP damages in an amount in excess of the Court's

1 general jurisdiction, to be proven at the time of trial. Such damages include without limitation a
2 percentage of the show's profits, sponsorship revenue, integration fees, rebate revenue,
3 international sales of formats and tapes, a percentage of all sales associated with the winning toy
4 from every season and other toys featured on the show, a percentage of ownership of the
5 business of each inventor presenting on the show going forward, revenue from spinoffs, a
6 percentage of website/app revenue, and the value of HP's ultimate sale of its TV series and any
7 affiliated website and/or app. Such damages are in an amount estimated to be hundreds of
8 millions of dollars and in excess of the jurisdictional minimum of this court to be determined at
9 trial.

10 **THIRD CAUSE OF ACTION**

11 **(For Fraud Against Mattel and Does 1 through 10)**

12 57. HP re-alleges herein by this reference each and every allegation contained in
13 paragraphs 1 through 56, inclusive, of this Complaint as if fully set forth herein.

14 58. Upon information and belief, in or around September 2014, after the September 5
15 meeting with HP, Mattel internally decided that it was going to move forward with a television
16 format and project that was so similar to *Playmakers* as to directly compete with it, but that it
17 was going to do so without HP. Mattel, however, concealed its intention from HP and
18 affirmatively led HP to believe that it still intended to proceed with HP at a later date.

19 59. Later on in September 2014, after the September 5 Meeting and while Mattel was
20 ostensibly moving forward with HP, Mattel set a meeting with a production company called
21 Hudsun. In September 2014, Mattel met with Hudsun. Upon information and belief, at that
22 meeting with Hudson in September 2014, Hudsun and Mattel discussed a reality-based television
23 show concept that was similar to *Playmakers*.

24 60. Upon information and belief, in or around September 2014, Hudson and Mattel
25 discussed getting the reality-television concept into "development as soon as possible." Upon
26 information and belief, by late September 2014, Mattel decided that it wanted to move forward
27 with a reality television project that was similar to *Playmakers* and hire Hudson to develop same
28 for Mattel. Likewise, Mattel decided that it was not going to move forward with HP.

1 61. Upon information and belief, Mattel believed that it was unlikely that two shows
2 that were similar in nature to *Playmakers* could co-exist. Accordingly, upon information and
3 belief, Mattel decided that it wanted to move forward quickly because it was concerned that HP
4 and/or another toy company/competitor would beat Mattel to market with a similar television
5 show. Upon information and belief, Mattel decided that it would beat HP to market.

6 62. Upon information and belief, in or around early 2015, Mattel entered into a
7 formal agreement with Hudson related to a reality show that was so similar to *Playmakers* as to
8 compete with it. Under this agreement, Mattel hired and paid Hudson to develop for Mattel the
9 show that ultimately became *The Toy Box*.

10 63. Upon information and belief, Mattel's strategy was to mislead HP about Mattel's
11 continued interest in working with HP on *Playmakers* while simultaneously moving forward
12 with another production company on a competitive project that Mattel was going to finance.
13 Misleading HP in this manner would allow Mattel to get a head start on HP and beat HP to
14 market.

15 64. Even though Mattel had decided to move forward with Hudson rather than with
16 HP, Mattel continued its discussions with HP about moving forward with *Playmakers*. In
17 particular, in September 2014, around the same time that Mattel had decided to move forward
18 with Hudson, Korchek continued discussions with Jerry Longarzo, an HP business affairs
19 representative, about *Playmakers*. After Mattel decided that it wanted to move forward with
20 Hudson and not HP, Korchek continued to speak to HP's Longarzo in September, October, and
21 November 2014 about *Playmakers*. At no time during those conversations did Mattel ever tell
22 Longarzo (or anyone else at HP) that it had decided to move forward with another production
23 company on a television show that was similar to *Playmakers*. At no time during those
24 conversations did Mattel ever tell Longarzo (or anyone else at HP) that it had decided not to
25 move forward with HP.

26 65. In late September 2014, after Mattel had decided to move forward with Hudson to
27 develop the reality television show (and not move forward with HP), HP's principal, Norton
28 Herrick, reached out to Mattel's Hollie Holmes. On October 14, Herrick again reached out to

1 Mattel's Holmes in order to try to set a call. Holmes did not tell Herrick that Mattel was not
2 moving forward with HP. Rather, she set the call and told Herrick that she wanted Korcheck to
3 participate since he was "running point on these type of opportunities from a Mattel
4 perspective."

5 66. In or around October and/or early November 2014, Herrick and Longarzo spoke
6 with Holmes and Korcheck about *Playmakers* several times by telephone. During one telephone
7 call during that time period, Mattel's Holmes informed HP that it was not going to move forward
8 with the *Playmakers* project at that time because Mattel had a poor financial period, but she
9 would let HP know when things changed. Holmes told HP's Herrick during that phone
10 conversation that Mattel was still interested in moving forward with *Playmakers*, but the timing
11 currently was not right. In that conversation, Holmes encouraged HP's Herrick to follow up with
12 Mattel in a few months. During another phone call during the same time period, Mattel's
13 Korcheck made similar statements to Longarzo, HP's business affairs representative, confirming
14 Holmes's position. In particular, Korcheck reiterated that Mattel was not going to move forward
15 with the *Playmakers* project at that time because Mattel had a poor financial period, it was
16 potentially facing layoffs, and since participating in a television series was not part of Mattel's
17 core or primary business, such an expenditure would be perceived as inappropriate while it was
18 experiencing financial difficulties. Again, at no time during those conversations did Mattel ever
19 tell anyone at HP that it had decided to move forward with another production company on a
20 television show so similar to *Playmakers* as to directly compete with *Playmakers*.

21 67. Several months later, in April 2015, Herrick again reached out to Mattel's Holmes
22 about *Playmakers*. Again, at no time during those conversations did Mattel ever tell anyone else
23 at HP that it had decided to move forward with another production company on a television show
24 that was so similar to *Playmakers* as to directly compete with *Playmakers*.

25 68. In sum, Mattel represented to HP that a poor financial period was the reason it
26 was not going to move forward with the *Playmakers* project at that time. Mattel also represented
27 that it was still interested in moving forward with *Playmakers* in the future, but the timing was
28 not right. Those representation(s) by Mattel were false. Specifically, the purported reason for

1 not moving forward with the project was false as was Mattel's representation that it was still in
2 interested in moving forward with *Playmakers* at a later date. In reality, Mattel had decided not
3 to move forward with HP. Moreover, the reason that Mattel was not moving forward with the
4 *Playmakers* project was not because it was experiencing financial difficulties. Rather, Mattel
5 had decided to move forward with a show that was so similar to *Playmakers* as to directly
6 compete with *Playmakers*, and was doing so with someone other than HP.

7 69. At a minimum, Mattel, in particular Mattel's Holmes and Korcheck, disclosed
8 some facts to HP about Mattel's decision not to move forward with *Playmakers*, but intentionally
9 failed to disclose other material facts, making Mattel's statement to HP extremely deceptive. In
10 particular, Mattel disclosed to HP, among other things, the fact that it did not intend to proceed
11 with HP at that time, but failed to disclose to HP that it had decided not to proceed with HP at all
12 and had decided instead to proceed with a competing show with a different production company.
13 Mattel's representations were deceptive in that they created the false impression that Mattel was
14 not proceeding with a show like *Playmakers* with anyone. Mattel had a duty arising from these
15 statements to inform HP that it had decided to proceed with someone else with a show that was
16 competitive to *Playmakers*.

17 70. HP did not know that Mattel was moving forward with a show that was
18 competitive with *Playmakers* (and may even have been based on *Playmakers*), and was doing so
19 with someone other than HP.

20 71. Mattel, in particular Holmes and Korcheck, knew that the representations were
21 false when they were made to HP. That is, Holmes and Korcheck knew the truth – that Mattel
22 was moving forward with a project that was competitive with *Playmakers*, that it was doing so
23 with someone other than HP, and that Mattel's purported financial constraints were not the
24 reason why Mattel was not moving forward with *Playmakers*.

25 72. Mattel intended to deceive HP and intended that HP rely on its false
26 representation. Specifically, Mattel wanted to string HP along and did not want HP to take
27 actions that would allow it to beat Mattel to market with *Playmakers*.

28 73. HP, in particular Herrick, reasonably relied on Mattel's representation. Had HP

1 know the truth – that Mattel was moving forward with a show so similar to *Playmakers* as to
2 directly compete with *Playmakers*, HP could and would have moved more swiftly to bring
3 *Playmakers* to market before Mattel's similar and competing show. As far as HP knew, there
4 were no competitors developing a similar show. Certainly, based on Mattel's representation, HP
5 had no reason to believe that Mattel was developing a competing show that was at least similar
6 to (if not based on) *Playmakers*. Doing so would be entirely inconsistent with Mattel's
7 representation that it was not moving forward because it was experiencing a poor financial
8 period. In addition to moving more swiftly to beat Mattel to market, HP would have
9 immediately taken formal legal action against Mattel.

10 74. HP was harmed by Mattel's fraud in that Mattel beat HP to market and Mattel's
11 *The Toy Box* prevented HP from moving forward with *Playmakers* and earning revenues related
12 to *Playmakers*. Shows that were similar in nature to *Playmakers* simply cannot co-exist.

13 75. HP's reliance on Mattel's misrepresentations and Mattel's concealment of the
14 truth was a substantial factor in causing HP harm.

15 76. HP also seeks exemplary damages against Mattel for its intentional fraud.

16 **FOURTH CAUSE OF ACTION**

17 **(For Misappropriation of Trade Secrets under CUTSA Against Mattel and Does 1 through**
18 **10)**

19 77. HP re-alleges herein by this reference each and every allegation contained in
20 paragraphs 1 through 76, inclusive, of this Complaint as if fully set forth herein.

21 78. HP owns trade secrets relating to the *Playmakers* format, including but not limited
22 to details regarding how the *Playmakers* show can be produced and presented to the viewing
23 public.

24 79. HP derived actual or potential independent economic value from the use of its
25 trade secrets and from its trade secrets not being generally known. HP has used these
26 *Playmakers* trade secrets in the past to begin the process of moving forward with a reality
27 television program. HP undertook reasonable efforts to protect the confidentiality of its trade
28 secrets, including by permitting only limited access to these trade secrets in confidential settings.

1 80. Without HP's authorization and in violation of the implied agreement and
2 obligations owed to HP, Mattel misappropriated HP's trade secrets by using and/or disclosing
3 those trade secrets to develop and/or produce its own competing television show called *The Toy*
4 *Box*. At a minimum, Mattel knew that it was industry-standard that such information was
5 confidential and could not be used or disclosed without HP's participation and consent.

6 81. HP did not allow Mattel to use its trade secret information in connection with a
7 competing television show and without HP's participation. Mattel knew or should have known
8 that it acquired knowledge of HP's trade secrets under a duty of non-disclosure and
9 confidentiality, and that use of such information would constitute a breach of confidentiality
10 owed to HP.

11 82. Mattel's misappropriation of HP's trade secrets is in violation of California Civil
12 Code Section 3426 et seq.

13 83. Mattel's use and/or disclosure of HP's trade secrets has damaged and caused
14 irreparable harm to HP.

15 84. Upon information and belief, Mattel's misappropriation has been willful and
16 malicious. Notably, Mattel was deceptive and fraudulent in its interactions with HP and actively
17 sought to create the false impression that it was not moving forward with HP due to financial
18 constraints, while in reality, it was moving forward with a competing television show. Mattel
19 did so in order to beat HP to market with the competing television show. Therefore, HP is
20 entitled to an award of exemplary damages pursuant to California Civil Code Sections 3426.3(c).

21 WHEREFORE, Plaintiff prays for judgment in its favor and against Defendants, and each
22 of them, as follows:

23 **ON THE FIRST CAUSE OF ACTION**

24 1. For damages in an amount in excess of the Court's general jurisdiction, to be
25 proven at the time of trial;

26 2. For pre-judgment interest at the maximum rate permitted by law;

27 3. For the costs of suit incurred herein; and

28 4. For such other and further relief as this Court may deem just and proper.

ON THE SECOND CAUSE OF ACTION

1. For damages in an amount in excess of the Court's general jurisdiction, to be proven at the time of trial;
2. For pre-judgment interest at the maximum rate permitted by law;
3. For the costs of suit incurred herein; and
4. For such other and further relief as this Court may deem just and proper.

ON THE THIRD CAUSE OF ACTION

1. For damages in an amount in excess of the Court's general jurisdiction, to be proven at the time of trial;
2. For exemplary and punitive damages;
2. For pre-judgment interest at the maximum rate permitted by law;
3. For the costs of suit incurred herein; and
4. For such other and further relief as this Court may deem just and proper.

ON THE FOURTH CAUSE OF ACTION

1. For damages in an amount in excess of the Court's general jurisdiction, to be proven at the time of trial;
2. For restitution and disgorgement of revenues and profits in amounts to be proven at trial;
3. For payment of a royalty for the Mattel's use of HP's trade secrets;
4. For treble damages as provided for by statute for willful and malicious conduct;
5. For pre-judgment interest at the maximum rate permitted by law
6. For an award of attorneys' fees and cost of suit to the extent permitted by law; and

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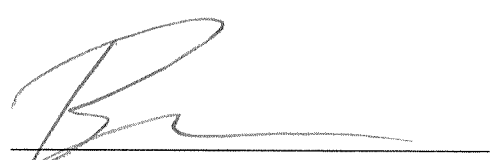
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7. For such other and further relief as the Court deems just and proper.

Date: July 2, 2019

FREEDMAN + TAITELMAN, LLP
RAINES FELMAN LLP



Bryan Freedman
Attorneys for Plaintiff Herrick Productions, LLC